UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION LLC, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE INC., Defendants.	NO. 07-CV-2103
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-3582

30(b)(6) VIDEOTAPED DEPOSITION OF STORM DUNCAN
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, JULY 16, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
CSR LICENSE NO. 9830
JOB NO. 15373

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JULY 16, 2008

9:14 a.m.

30(b)(6) VIDEOTAPED DEPOSITION OF STORM DUNCAN, held at the offices of SHEARMAN & STERLING, 525 Market Street, San Francisco, California, pursuant to notice, before ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR License No. 9830.

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A P P E A R A N C E S: (Continued.)

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09:18:46 A No.

09:18:46 Q Is there any reason why you cannot give complete and accurate testimony today?

09:18:49

09:18:52 A No.

09:18:52 Q What is the highest degree you've obtained educationally?

09:18:59

09:19:00 A A masters degree.

09:19:02 Q Is that an MBA or --

09:19:05 A Yes, MBA from University of Michigan.

09:19:08 Q And when was that awarded?

09:19:10 A 1994.

09:19:15 Q And who is your current employer?

09:19:17 A Credit Suisse.

09:19:17 Q And what is your job title?

09:19:19 A Managing director.

09:19:20 Q And is there a particular group or -- group at Credit Suisse that you work in?

09:19:29

09:19:31 A I'm in the mergers and acquisitions group.

09:19:34 Q And within that group, is there any subdivision technology or anything like that that you're primarily located in?

09:19:38

09:19:42

09:19:45 A Yeah. I'd say most of my time is spent in the technology arena.

09:19:47

09:19:48 Q And how long have you held that position?

09:19:52 A Of managing director?

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09:19:54 Q Yes.

09:19:54 A I think it's been about four or five years now.

09:19:57 Q And were you working for Credit Suisse before that, before you became a managing director?

09:20:04 A Yes.

09:20:06 Q For how long?

09:20:06 A I've been with Credit Suisse since about the end of 1999.

09:20:08 Q And what was your position before you became a managing director?

09:20:10 A Director.

09:20:15 Q And did you focus on the same types of matters that you focus on now, mergers and acquisitions in the technology area?

09:20:19 A Yes.

09:20:21 Q And between receiving your MBA in 1994 and moving to Credit Suisse in 1999, were you employed somewhere else or other places?

09:20:30 A Yes.

09:20:30 Q Where?

09:20:39 A What is now UBS. It was a start of my career. I was at Merrill Lynch and Lehman Brothers.

09:20:43 Q And were those all investment-banker-type positions?

09:20:45 A Yes.

09:20:45 Q Where?

09:20:48 A What is now UBS. It was a start of my career. I was at Merrill Lynch and Lehman Brothers.

09:20:52 Q And were those all investment-banker-type positions?

09:20:56 A Yes.

09:21:01 Q Where?

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09:39:48 Q And can you tell me what this document is?

09:39:55 A It's a set of discussion materials surrounding Project Yellow, I think, which is our code name for YouTube that addresses a profile of Yellow and sector overview, as well as some preliminary financial analyses, and then there's some exhibits in the back, but I think that's the primary gist of what it's trying to accomplish.

09:40:16 Q Okay. And you said in your answer that Yellow is the code name for YouTube?

09:40:23 MR. VOLKMER: Objection to the form of the question.

09:40:25 THE WITNESS: Yes.

09:40:27 MR. HOHENGARTEN: Q. And is Green also used in this documentation as a code name or alternative name for Google?

09:40:38 MR. VOLKMER: Objection to the form of the question.

09:40:42 THE WITNESS: Yes, it appears that's the case as well.

09:40:58 MR. HOHENGARTEN: Q. And you stated that this document begins with a profile of YouTube; is that what -- is that correct?

09:41:19 MR. VOLKMER: Objection to the form of the question.

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09:41:21 THE WITNESS: The first table -- in the table
09:41:22 of contents, the first section is a profile of Yellow
09:41:25 and sector overview.
09:41:27 MR. HOHENGARTEN: Q. And which -- which
09:41:35 pages that follow constitute that part of the
09:41:38 document?
09:41:40 A The divider pages, page two, and then I think
09:41:43 the section ends on page 12.
09:41:57 Q And you're referring to Bates page 2231?
09:42:01 A So Bates --
09:42:02 Q The Bates numbers are those numbers on the
09:42:06 lower right.
09:42:07 A So the divider page is Bates 2221 as a
09:42:12 starter one for the divider page. The section begins
09:42:14 on 2222 and ends on 2231.
09:42:18 Q And then starting on Bates page 2232, is that
09:42:46 the beginning of a financial analysis, a preliminary
09:42:53 financial analysis?
09:42:55 A Yeah, the title page of 2232 is "Preliminary
09:42:57 Financial Analysis," and the subsection is
09:43:00 "Illustrative --" sorry "-- Illustrative Model."
09:43:02 Q And what is an "Illustrative Model" or what
09:43:06 is this "Illustrative Model"?
09:43:08 A The -- an "Illustrative Model" in the context
09:43:11 of how I'm viewing it here is that we didn't have any

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11:03:27 Suisse that the purchase price they are paying is fair
11:03:29 to their shareholders from a financial point of view,
11:03:32 and actually I don't have the fairness opinion in
11:03:34 front of me, so it could be to the Board of Directors
11:03:37 or some other constituency, but to some constituency,
11:03:43 the transaction is fair from a financial perspective.
11:03:45 Q But it would be for an opinion provided to
11:03:48 Google or its Board of Directors, and you're doing
11:03:50 this for Google; correct?
11:03:51 A Yes, that's correct.
11:03:52 Q So is it fair to Google or for Google?
11:03:54 A Or Google's shareholders, and I'm sure we'll
11:03:57 get there at some point. I can answer that more
11:03:59 specifically who we addressed it to, but....
11:04:02 Q And had Credit Suisse been asked to begin its
11:04:16 analyses to provide a fairness opinion before the time
11:04:18 of this e-mail?
11:04:28 A It's not inherently obvious to me from this
11:04:32 e-mail that that's the case, but I would think it
11:04:34 would be odd to just get an e-mail with this snip of
11:04:38 information only, so I would assume there was a
11:04:41 conversation before this e-mail.
11:04:42 Q And as the corporate representative of Credit
11:04:46 Suisse, can you say when Credit Suisse's engagement
11:04:50 began on the project to provide a fairness opinion?

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11:04:56 A So we had been engaged on -- engaged being a very nonlegal term -- so actively involved on this project for a number of months. I think even prior to August we had conversations with Sequoia and with Google trying to put the two companies together.

We had the August set of conversations which we talked about, and then -- and your question might be specifically referring to this. It appears as though they came to some purchase price on this term sheet on October 5th that was attached to the e-mail on October 5th.

So I would assume somewhere very close to the vicinity of October 5th they called us up and said, "Hey, can you provide a fairness opinion?"

Q Okay. And you mentioned Sequoia in your answer. What is that?

A Sure. Is there a date on this, too? It might help clarify it.

The -- and just for the benefit, the date on the term sheet has a draft of October 3rd. So if it's a draft of October 3rd, you could probably interpolate something between the 3rd and the 5th as being when they would have called us to do the fairness opinion.

Sequoia is a venture capital firm, and I'm going a little bit off of memory here, that's -- if my

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11:06:14 memory is correct, it is one of the significant
11:06:16 investors in YouTube.
11:06:18 Q And from your prior answer, your prior answer
11:06:25 indicated that Credit Suisse had also talked to
11:06:29 Sequoia in connection with a possible purchase of
11:06:32 YouTube; is that right?
11:06:42 A I'm pretty sure that we had conversations
11:06:44 with Sequoia around YouTube that were beyond just or
11:06:49 specifically just an acquisition that were certainly
11:06:54 in advance of this, and I think actually when you
11:06:57 showed me a previous exhibit, we actually had been
11:07:00 asked to hold off on continuing those conversations,
11:07:06 Exhibit 6, to preserve the delicacy of Google's
11:07:13 approach.
11:07:18 Q And keep that exhibit handy, but we'll mark
11:07:49 also Exhibit 9.
11:07:53 (Document marked Duncan Exhibit 9
11:08:07 for identification.)
11:08:07 MR. HOHENGARTEN: Sorry.
11:08:08 Q Which is Bates Nos. CSSU 2908 through 2913.
11:09:16 A Okay.
11:09:16 Q And Exhibit 9 is a cover e-mail followed by a
11:09:27 letter and a term sheet; correct?
11:09:31 MR. VOLKMER: Object to the form of the
11:09:34 question.

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11:09:35 THE WITNESS: Exhibit 9 has three components
11:09:41 to it. It has an e-mail track record as page 2908.
11:09:46 As page 2909, it has a letter from David Drummond at
11:09:51 Google to Chad and Steve at YouTube, and then the
11:09:54 remaining pages appear to be a term sheet.
11:09:57 MR. HOHENGARTEN: Q. And as the corporate
11:10:03 representative of Credit Suisse, is it your
11:10:05 understanding that this term sheet is the final term
11:10:07 sheet for Google's acquisition of YouTube?
11:10:12 A On the first page there's a line from Matt
11:10:16 Sucherman to Salman Ullah and Sean Dempsey saying that
11:10:20 this is not the countersigned. It doesn't say what
11:10:24 this says. "It's not countersigned by target but it
11:10:27 is the final."
11:10:28 Q And as a recipient of this, you understood it
11:10:32 to be the final term sheet; correct?
11:10:35 A That's correct. I had -- I assumed that was
11:10:36 the truth.
11:10:37 Q And sitting here today, you have no reason to
11:10:39 doubt that; correct?
11:10:45 A That's right.
11:10:45 Q Is the term sheet provided to Credit Suisse
11:10:55 in connection -- is it being provided in connection
11:10:58 with the request for a fairness opinion about the
11:11:00 transaction?

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11:11:07 A I think that's a fair assumption. The -- again, the next sentence on here says the countersigned copies are in my office, and he asked Salman if things are in motion for a fairness opinion.

So, you know, as -- I think that's fair to assume that at this point that we're fully starting to have a conversation with Google around doing a fairness opinion, and that's starting to get supported by some of these documents you've provided me.

Q Is the term sheet something that is typically provided to Credit Suisse when it's asked to give a fairness opinion?

A You know, the fairness opinion is dependent upon knowing what the economics of the transaction are, so we could get that from a definitive agreement or a term sheet.

So to get the balls rolling, we'd probably depend upon a term sheet at the end of the day that the definitive agreement is going to have the final term, which is what we would really rely upon.

Q When you say "the definitive agreement," do you mean the final merger agreement or acquisition agreement?

A That's right.

Q And under this term sheet, was the proposed

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price, the agreed-to price at which Google would purchase YouTube $1.65 billion?

MR. VOLKMER: Object to the form of the question.

THE WITNESS: The face value of that offer on the term sheet is $1.65 billion.

MR. HOHENGARTEN: Q. And is there some other way of measuring the offer other than the face value?

A Sure.

So on Bates 2910, under "Acquisition Consideration," there's a sentence in there that says that that Google is going to issue a number of shares of Google Class A Common Stock, the "Shares," in quotes, equal to $1,650,000,000 based on the average daily closing price of the shares for 30 days immediately preceding the closing of the acquisition.

So what that means is is that 1.65 billion is an optical number. The value that they're actually going to get is a number of shares equal to $1.65 billion divided, you know, a share price of $30 on average divided into that 1.65 billion. So that will be a number of shares they'll get, and that will have a value that will be different than $1.65 billion by definition.

Q Based on variation of price per shares?

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11:14:15 A That's right.

11:14:15 Q And again, Credit Suisse was retained in order to provide an opinion that the purchase price was fair; correct?

11:14:27 A Gosh, I'd have to see the fairness opinion to see if that's the exact phraseology, because I don't -- I'm not trying to parse your words. That's not fair of me to do, but I think it's that the acquisition consideration was fair, which would be the shares that they issued, not the $1.65 billion.

11:14:42 Q Okay. Thank you.

11:14:43 And what I want to know is whether -- do you know what that consideration was in dollar value in the end?

11:14:50 A The fairness opinion is given at the time of execution of the definitive agreement. And as such, we would have made an assumption as to the number of shares that were issued that, in reality -- so to answer your question specifically, I think the number of shares declined substantially from signing to closing, because I think Google's stock price went up, so they were issued fewer shares.

11:15:10 I don't recall without going into some of the books that you might provide to me what our fairness opinion -- what shares our fairness opinion exactly

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were based upon and what it actually ended up being at the end of the day.

Q We'll come back to that.

A Okay. Sounds good. Thanks.

Q We'll mark Exhibit 10.

A Should I put these away?

Q Yes.

(Document marked Duncan Exhibit 10 for identification.)

MR. HOHENGARTEN: Q. Which is Bates Nos. CSSU 28545 to 2852. Sorry. Let me -- it's CSSU 2845 to 2852.

A Thank you. Okay.

Q Can you describe what Exhibit 10 is?

MR. VOLKMER: Object to the form of the question.

THE WITNESS: Exhibit 10 has a number of pages. The first page of which is an e-mail chain. Actually, the first two pages of which are an e-mail chain, Bates 2845 and 2846; and then Bates 2847 to Bates 2852 are an engagement letter between Credit Suisse and Google.

MR. HOHENGARTEN: Q. And as the corporate representative of Credit Suisse, can you tell me whether this is the final engagement letter between

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11:18:18 Credit Suisse and Google related to this fairness
11:18:20 opinion?
11:18:21 A It appears to be, yeah, the final executed
11:18:24 copy, yes.
11:18:25 Q In looking at Bates page 2847 of Exhibit 10,
11:18:35 under "Compensation," it provides that the company
11:18:40 agrees to pay Credit Suisse a fee of 2,000 -- sorry.
11:18:46 $2,500,000 payable upon rendering of our opinion;
11:18:50 correct?
11:18:50 A That's correct.
11:18:50 Q And the company he's referring to is Google;
11:18:54 right?
11:18:56 A That's correct.
11:19:02 Q And Google was obligated to make that payment
11:19:07 upon the rendering of Credit Suisse's opinion
11:19:09 regardless of whether -- whether Credit Suisse said
11:19:12 the consideration for the transaction was fair or not
11:19:17 fair; correct?
11:19:18 A That's correct.
11:19:18 Q And at the bottom of that same page, 2847, it
11:19:32 says "In connection with Credit Suisse's engagement,
11:19:34 the Company will furnish, or cause to be furnished to
11:19:38 Credit Suisse all information concerning the Company
11:19:39 and, to the extent available to the Company, Target
11:19:43 that Credit Suisse reasonably deems necessary or

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11:49:48 Q And having reviewed this e-mail as a
11:49:51 corporate representative of Credit Suisse, you
11:49:53 testified that Zach Maurus also went to Wilson Sonsini
11:49:58 for due diligence?
11:50:00 A He did. It helped refresh an additional
11:50:02 name. Thank you.
11:50:02 Q And having now been refreshed in that way, do
11:50:05 you recall anybody else who was there from Credit
11:50:06 Suisse?
11:50:09 A I don't think Chris Scarborough was there,
11:50:14 which is who sent the e-mail, so I think it was just
11:50:17 Zach and I and Jim Kim. Amrit Rao might have attended
11:50:23 at some point. I'm not sure, so that's another -- a
11:50:25 fourth possibility.
11:50:26 Q And can you spell that name?
11:50:28 A R-A-O.
11:50:28 Q And how is the first name spelled?
11:50:31 A A-M-R-I-T.
11:50:33 Q Thank you.
11:50:48 We'll mark Exhibit 13 which is CSSU 2686.
11:50:59 (Document marked Duncan Exhibit 13
11:51:18 for identification.)
11:51:18 THE WITNESS: Thank you. Okay.
11:52:01 MR. HOHENGARTEN: Q. Exhibit 13 is an e-mail
11:52:03 chain. The latest e-mail, top e-mail in the chain, is

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11:52:07 from Sean Dempsey of Google to Zach Maurus, Storm
11:52:13 Duncan, and James Kim; correct?
11:52:15 A That's correct.
11:52:15 Q Dated October 6th, 2006; correct?
11:52:18 A That's correct.
11:52:18 Q And it's forwarding a Snowmass video
11:52:21 analysis; correct?
11:52:22 A That's correct.
11:52:23 Q And you testified earlier that Snowmass
11:52:28 referred to the transaction of Google acquiring
11:52:31 YouTube; correct?
11:52:32 A That's correct.
11:52:35 Q And the e-mail from Sean Dempsey is
11:52:38 forwarding an e-mail from Salman Ullah, also dated
11:52:43 October 6th; correct?
11:52:45 A Correct.
11:52:47 Q And it shows a breakdown of types of videos
11:52:52 on YouTube or some analysis of that; is that right?
11:52:57 MR. VOLKMER: Objection to the form of the
11:52:59 question.
11:52:59 MR. HOHENGARTEN: Actually, let me rephrase
11:53:00 that question.
11:53:01 Q Can you describe what this Snowmass video
11:53:05 analysis is?
11:53:06 MR. VOLKMER: Objection to the form of the

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11:53:08 question.

11:53:08 THE WITNESS: The title of the e-mail is "Snowmass video analysis" that was sent from Salman to Salman, and within it there's a detail of videos, I guess, which is -- includes 424, I guess 123 which aren't valid URLs. I'm not sure what that means in terms of the total quantity.

11:53:37 And then it says a subdivision of that 424 -- sorry. That 424 less the 123 describing them by two -- three categories, a premium category, a removed category, and a no category, which is no copyright but includes commercials, trailers, public service promos and true UGC.

11:54:09 Q That's the no category, what you were just describing?

11:54:11 A That's right.

11:54:12 Q And the premium category, do you understand what that is?

11:54:18 A Yeah. It says it's content that is copyrighted either in whole or in substantial part, and it also included, removed where links were -- that were taken down.

11:54:31 Q Do you understand what removed where -- were links that were taken down means?

11:54:36 A Probably not from a technical perspective,

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11:55:36 MR. VOLKMER: And renew that objection.

11:55:39 THE WITNESS: No. The way I read it, it's 63 percent of the net total, not the gross total. So the percentage of the total would be 189 over 424 which would be a smaller percentage than the 63.

11:55:50 MR. HOHENGARTEN: Okay. Let me step back.

11:56:02 Q As the corporate representative of Credit Suisse, what is your understanding of the purpose of providing this information to Credit Suisse?

11:56:09 MR. VOLKMER: Objection to the form of the question.

11:56:11 THE WITNESS: This is more information that -- that is being provided to us coincident with, I think, with what we just discussed in Exhibit 11 to help us facilitate doing some modeling around the valuation or the financial performance first, and then the valuation second of YouTube.

11:56:39 MR. HOHENGARTEN: Q. And it's a -- one way of breaking down video content on YouTube into categories; correct?

11:56:47 A Yes.

11:56:48 Q And it's relevant to the valuation insofar as the ability to monetize these different categories may be different; correct?

11:57:00 A That is one way they could be differentiated,

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11:57:04 yes.

11:57:04 Q Do you know whether in your final valuation

11:57:08 models, which we'll get to, but at this point whether,

11:57:13 in fact, you differentiated between these categories

11:57:18 according to the ability to monetize them?

11:57:21 A It would probably be easier to answer that

11:57:22 question when I have that stuff in front of me.

11:57:25 Q Okay.

11:57:25 A You want me to guess?

11:57:27 Q No, I don't want you to guess.

11:57:28 A Okay.

11:57:29 Q But -- but having worked on this project, I

11:57:31 thought you might be able to give me a -- an answer

11:57:33 based on what you know right now.

11:57:34 A Okay. Yeah.

11:57:35 MR. VOLKMER: I'm going to object to the form

11:57:37 of this question --

11:57:37 THE WITNESS: Okay.

11:57:38 MR. VOLKMER: -- to the extent there's a

11:57:40 question pending.

11:57:41 MR. HOHENGARTEN: Well, it was my original

11:57:43 question, actually. I can read it.

11:57:51 Q Do you know whether in your final valuation

11:57:53 models, which we'll get to, but at this point whether,

11:57:58 in fact, you differentiated between these categories

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11:58:01 according to the ability to monetize them?

11:58:06 MR. VOLKMER: I'm going to renew the

11:58:08 objection.

11:58:12 THE WITNESS: Thank you.

11:58:13 Let's wait until we get to those, and then

11:58:15 I'll give you a better answer.

11:58:16 MR. HOHENGARTEN: Q. Let's walk through the

11:58:17 breakdown here though --

11:58:19 A Sure.

11:58:19 Q -- still.

11:58:19 We started to talk about it but I want to try

11:58:22 to go through it a little more methodically to make

11:58:25 sure that I understand the information that's being

11:58:27 supplied here.

11:58:28 A Okay.

11:58:29 Q There is -- the first line gives a gross

11:58:30 total and it says "424"; correct?

11:58:36 A That's correct.

11:58:36 Q In parenthesis, and you mentioned this in a

11:58:40 prior answer, it says "Includes 123 that aren't valid

11:58:45 URLs"; correct?

11:58:47 A That's correct also.

11:58:47 Q Do you understand what the 424 refers to?

11:58:55 A My recollection of the 424 is that it's a --

11:58:59 it says at the top of the e-mail, "Some manual

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11:59:02 analysis we did," was that it was a study that the
11:59:07 Google folks had performed studying, you know, a
11:59:10 number of randomly generated or chosen videos, and
11:59:16 that 424 is the number that they had randomly chosen
11:59:19 and -- and were able to categorize with these
11:59:25 subcategorizations.
11:59:27 Q Okay. And the "includes 123 that aren't
11:59:30 valid URLs," do you understand what the meaning of
11:59:36 that is?
11:59:38 A I would assume -- I don't know YouTube's
11:59:42 technology underpinnings well enough, but I would
11:59:46 assume that meant at one point there was a video that
11:59:49 had been put up and it kind of looks as though you can
11:59:52 click on it, but when you click on it, that video is
11:59:55 no longer there, so it's no longer valid. That would
11:59:58 be my understanding.
11:59:59 Q And that number is subtracted from -- the 123
12:00:03 that aren't valid URLs are -- are subtracted from the
12:00:07 gross total to provide a net total of videos of 301;
12:00:13 is that correct?
12:00:13 A That's correct.
12:00:14 Q And then that net total of 301 videos that's
12:00:18 regard -- that treated as 100 percent for purposes of
12:00:20 the analysis; right?
12:00:21 A That's correct, yes.

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12:00:22 Q And then that's divided into two categories. The first category is called "No," and the second category is called "Pram/Rem," which I believe means premium/removed; correct?

A Yes.

MR. VOLKMER: Object to the form of the question.

MR. HOHENGARTEN: Q. The first category is "No"; correct?

A Yes.

Q And the second category is labeled here "Prem/rem"; correct?

A There's actually just two labelings. So the definition down below expands upon that to say that it means premium/removed.

Q Okay. And that category of premium/removed under this analysis is 63 percent of the net total of videos sampled; correct?

MR. VOLKMER: Objection to the form of the question.

(Whereupon, record read by the Reporter as follows:

"Question: Okay. And that category of premium/removed under this analysis is 63 percent of the net total of videos

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12:01:14 sampled; correct?")

12:01:37 THE WITNESS: So the -- the premium/removed category is 189 of the 424, and 189 of the 301. So the percentage 63 percent is 63 percent of the net total, so hopefully that answers your question, I think.

12:01:52 MR. HOHENGARTEN: Q. It's 63 percent of the net total which excludes the URLs that aren't valid?

12:01:58 A That's correct, which is, I think, the definition of net total for purposes of this, which I think you established as well, so sure.

12:02:08 Q And the "No" category is 37 percent of that net total; correct?

12:02:14 A That's correct, yes.

12:02:15 Q So setting aside the URLs that aren't valid, the remaining sample of videos, the net total, breaks down into 63 percent that are premium removed and 37 percent that are no; correct?

12:02:30 A That's correct.

12:02:31 Q And the premium/removed category includes content that is copyrighted in whole or substantial part, plus removed, which are links that were taken down; right?

12:02:48 A Yeah, that's how it's categorized here from -- from the Google folks.

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12:02:56 Q And the no category is categorized here by
12:03:07 the people from Google as no copyright but includes
12:03:12 commercials, trailers, public service, promos, and
12:03:16 true UGC; right?
12:03:18 A That's correct.
12:03:18 Q What is -- what is your understanding of the
12:03:21 phrase "true UGC"?
12:03:23 MR. VOLKMER: Objection to the form of the
12:03:25 question.
12:03:26 THE WITNESS: I think that the initials UGC
12:03:30 probably stand for user-generated content.
12:03:33 MR. HOHENGARTEN: Q. And true UGC?
12:03:45 A I'm not sure. I mean, true UGC is just
12:03:50 honest UGC. Honestly, you know, user generated. I
12:03:55 would assume it's implying the users had generated
12:03:58 that content through their cell phones, or through a
12:04:01 video camera, or something along those lines.
12:04:03 Q Okay. And that true UGC is encompassed in
12:04:06 the no category; right?
12:04:07 A That's correct.
12:04:07 Q Now, the no category also includes
12:04:10 commercials, trailers, public service announcements,
12:04:13 and promotions; right?
12:04:15 A That's correct.
12:04:16 Q And together the true UGC, plus those other

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12:04:19 categories, are 37 percent of the net total sample;
12:04:24 right?
12:04:24 A That's correct.
12:04:25 Q And the other 63 percent is either premium,
12:04:29 which is defined as copyrighted content or removed,
12:04:34 which is links taken down?
12:04:35 MR. VOLKMER: Objection to the form of the
12:04:37 question.
12:04:49 (Whereupon, record read by the Reporter as
12:04:49 follows:
12:04:26 "Question: And the other 63 percent is
12:04:28 either premium, which is defined as
12:04:31 copyrighted content or removed, which is
12:04:35 links taken down?")
12:04:49 MR. TAFFET: I'll join in that objection.
12:04:51 THE WITNESS: Yeah, I think that -- I think
12:04:53 we actually clarified what premium and removed was
12:04:56 earlier, and I think it's written explicitly on
12:04:59 Exhibit 13. So I just read it for your clarification,
12:05:02 not for your clarification, but for the clarification
12:05:03 of the answer.
12:05:04 The premium/removed means the content is
12:05:09 copyright either in whole or in substantial part, and
12:05:13 then also the second part is "and removed were links
12:05:16 that were taken down."

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12:05:17 MR. HOHENGARTEN: Okay.

12:05:23 Q Did Credit Suisse itself review any YouTube videos or sample of videos in connection with providing a fairness opinion?

12:05:27 A No.

12:05:32 Q Do you know, as the corporate representative of Credit Suisse, did you receive any other information about a breakdown of video categories from Google other than this e-mail, Exhibit 13, that we've just been talking about?

12:05:34 MR. VOLKMER: Object to the form of the question.

12:05:50 THE WITNESS: We might have received other categorization. I guess when we go through more documents, that might help refresh my memory. Sitting here right now, I can't remember which documents might have given us additional information.

12:05:52 Certainly there's some additional kind of characterization of the videos in Exhibit 8 that you showed me previously, but it wasn't re-categorizing it any differently than had been shown here.

12:05:54 MR. HOHENGARTEN: Mark exhibit -- what was that one?

12:06:48 THE WITNESS: 13 was the last one.

12:06:49 MR. HOHENGARTEN: Exhibit 14, which is CSSU

12:06:53

12:06:55

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12:07:01

12:07:04

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12:08:05

12:08:06

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12:08:11 4069 through 4074.

12:08:22 (Document marked Duncan Exhibit 14

12:08:34 for identification.)

12:08:34 MR. HOHENGARTEN: Sorry.

12:10:29 THE WITNESS: Okay.

12:10:30 MR. HOHENGARTEN: Q. Exhibit 14 is an e-mail

12:10:39 chain with an attachment; correct?

12:10:48 A There were two attachments, it looks like,

12:10:50 but yes, at least on the attached line up top it says

12:10:54 there's two.

12:10:55 Q Yes, you're right.

12:10:57 The attachments at the top says "agua

12:11:00 model.xls" and "agua model.xls," the same names;

12:11:05 correct?

12:11:05 A They do say the same name.

12:11:09 Q Either with attachment or attachments.

12:11:18 A Sure. Absolutely. That's a little confusing

12:11:21 as well but yes, it looks like there are either one or

12:11:24 two attachments. There are definitely two

12:11:26 attachments. I'm not sure if they're different and

12:11:28 named the same or named the same and the same.

12:11:30 Q And the -- the e-mail is being sent by James

12:11:34 Kim of Credit Suisse to Salman Ullah of Google and

12:11:39 Storm Duncan and James Kim of -- of Credit Suisse;

12:11:43 right?

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12:11:45 A And David Drummond.
12:11:46 Q Thank you, and David Drummond.
12:11:48 A And a whole bunch of people cced as well.
12:11:51 Q And the e-mail says "Attached please find the latest version of the model"; correct?
12:11:54
12:11:57 A It does.
12:11:58 Q And do you know what's meant by "the model" there?
12:12:02
12:12:05 A It appears to be the -- the beginning of a model or more than the beginning. A substantial -- a substantially further enhanced draft of a model incorporating some monetization around YouTube.
12:12:12
12:12:16
12:12:21
12:12:30 Q And what kind of a model is this? Is it a cash flow model?
12:12:34
12:12:47 A This has a -- what is the Bates numbers? Is that the name again?
12:12:52
12:12:53 Q Yes, that's what those numbers at the bottom are.
12:12:56
12:12:56 A Bates Nos. 4071 and 4072 seem to be a projection model. 4073 has a valuation. Hard to tell if that's a discounted cash flow model or not, but it appears that it could be, and then 4074 is a further projection model with again some valuation at the bottom that -- hard to tell if it's a DCF or not.
12:13:01
12:13:06
12:13:08
12:13:17
12:13:23
12:13:27 Q When you say "DCF," you mean discounted cash

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12:13:29 flow?

12:13:40 A Yes.

12:13:40 Q And looking at Bates page 4071 --

12:13:52 A Okay.

12:13:53 Q -- this is the first of the first two pages -- of the two pages which you said were a projection model; right?

12:14:10 A Yes.

12:14:10 Q And what's being projected here?

12:14:27 A The project of the financial performance of YouTube, and I'm not sure if it's as part of Google or not. It doesn't specifically say.

12:14:47 Q Okay. And so to do that projection, is it looking at projecting revenue that YouTube would be able to bring in in the future?

12:14:59 A Yes.

12:15:00 Q And then is it also looking at the cost of that revenue or expenses to get net revenue measured in a variety of ways?

12:15:12 A It does come to net revenues well, and then also further costing that down to the EBIDTA level and the EBIT level, and the net operating profit after tax level free cash flow, which is NOPAT and then FCF at the very bottom.

12:15:32 Q And for a layperson, are those different ways

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13:17:29 for identification.)

13:17:29 THE WITNESS: Okay.

13:17:29 MR. HOHENGARTEN: Q. And Exhibit 17. First page of Exhibit 17 is a cover e-mail with an attachment; is that correct?

13:17:44 A Yes.

13:17:44 Q And it's being sent by Amrit Rao to Storm Duncan, yourself, cc Chris Scarborough and James Kim; right?

13:17:57 A Yes, that's correct.

13:18:00 Q On October 9th, 2006; correct?

13:18:01 A Yes.

13:18:07 Q And it -- subject is "Green Board Materials"; right?

13:18:07 A Correct.

13:18:15 Q And then there's an attachment which is indicated that its file name is "Materials for Green Board.pdf; correct?

13:18:16 A That's correct as well.

13:18:30 Q And the remainder of Exhibit 16 after the e-mail, after the first page, is that attachment; correct?

13:18:31 A Exhibit 17 --

13:18:35 Q I'm sorry.

13:18:38 A -- and yes.

13:18:40

13:18:42

13:18:42

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13:18:48 Q Thank you for correctly identifying the exhibit number as 17.

13:18:51 A Absolutely.

13:18:58 Q And is this presentation -- this is a presentation to the Google board about the YouTube acquisition; is that right?

13:19:09 MR. VOLKMER: Objection to the form of the question.

13:19:11 THE WITNESS: This is a presentation to the Google board, and I think it is our fairness presentation.

13:19:22 MR. HOHENGARTEN: Q. Your fairness presentation?

13:19:24 A Yes.

13:19:25 Q And what is a fairness presentation?

13:19:30 A It's a -- as you recall from the earlier topics that we discussed, we were asked to provide a fairness opinion, and this is the book that allows them to understand how we came to our fairness opinion.

13:19:49 Q In -- was this book or presentation actually presented to the Google board?

13:19:55 A It was.

13:19:55 Q Were you present for that presentation?

13:20:10 A I was.

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13:20:10 Q Was this book or presentation presented to other Google personnel at any other time?

MR. VOLKMER: Objection to the form of the question.

(Whereupon, record read by the Reporter as follows:

"Question: Was this book or presentation presented to other Google personnel at any other time?")

THE WITNESS: I don't recall. It wouldn't surprise me if we also shared it with the operating team of Salman Ullah, Sean Dempsey, but I don't recall specifically if we did or didn't.

MR. HOHENGARTEN: Q. We'll also come back to this --

A Okay.

Q -- but let's just get a couple more exhibits.

We'll mark Exhibit 18, which is CSSU 2882 through 2885.

(Document marked Duncan Exhibit 18 for identification.)

THE WITNESS: Thank you. Okay.

MR. HOHENGARTEN: Q. Exhibit 18 is a cover e-mail from James Kim to Salman Ullah and Matthew -- matthew@google.com and Sean Dempsey; correct?

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13:22:02 A Yes.

13:22:02 Q Do you know who matthew@google.com is?

13:22:09 A I don't recall off the top of my head. I thought I saw him on the previous exhibit, but I don't know if you want me to use your time looking for that or not.

13:22:24 Q And the attachment to this e-mail is Credit Suisse's final fairness opinion in connection with Google's acquisition of YouTube; is that right?

13:22:35 A That's correct. It's the executed version.

13:22:38 Q And the opinion provides that -- let me start that question over.

13:23:13 It's -- according to this opinion, it's Credit Suisse's opinion that the aggregate consideration to be paid by Google in the merger is fair to Google from a financial point of view; correct?

13:23:50 A Yes, and this opinion also outlines an answer to an earlier question you had as to how the consideration is defined.

13:24:03 Q I was just about to ask that, and what is the -- how is the aggregate consideration defined here?

13:24:16 A An aggregate number of shares of Class A Common Stock of Google equal to the quotient of

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13:24:24 1 1.65 billion divided by the average daily closing
13:24:29 2 price of a Google Class A Common Stock for the 30
13:24:32 3 consecutive trading day period ending two trading days
13:24:36 4 prior to the closing date of the merger.
13:24:40 5 Q So it's a certain number of shares of stock
13:24:43 6 determined by a formula set out there; is that right?
13:24:46 7 A That's correct.
13:24:46 8 Q And when providing this opinion, were you
13:24:52 9 able to estimate the -- the value of that stock --
13:24:57 10 MR. VOLKMER: Objection to the form of the
13:24:58 11 question.
13:24:58 12 MR. HOHENGARTEN: Q. -- and the date of the
13:25:00 13 transaction?
13:25:00 14 MR. VOLKMER: Sorry about that.
13:25:07 15 MR. HOHENGARTEN: Q. On the date of the
13:25:10 16 transaction?
13:25:13 17 A Can you define "date of the transaction"? Is
13:25:18 18 that --
13:25:21 19 Q The date that they would hand over the
13:25:23 20 shares.
13:25:23 21 A No, no.
13:25:24 22 Q You didn't -- you didn't make an attempt to
13:25:27 23 estimate what the value would be or projection to
13:25:30 24 provide this opinion?
13:25:31 25 A No.

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13:25:31 Q In order to provide an opinion, do you assume
13:25:37 a value of $1.65 billion of the stock on the date that
13:25:43 the aggregate consideration is paid?
13:25:46 MR. VOLKMER: Object to the form.
13:25:49 THE WITNESS: We would never project what
13:25:52 Google's stock -- any company's stock price would be
13:25:56 in the future, in addition to Google's.
13:25:57 MR. HOHENGARTEN: Q. How -- how are you able
13:26:13 to determine that a number of shares of stock -- let
13:26:21 me rephrase that.
13:26:22 What are you measuring the fairness of here?
13:26:26 MR. VOLKMER: Objection to the form of the
13:26:28 question.
13:26:30 THE WITNESS: We're measuring the fairness
13:26:31 of -- from a financial -- it's the first sentence,
13:26:31 actually.
13:26:36 The fairness from a financial point of view
13:26:37 of Google, Inc., of the aggregate consideration
13:26:40 provided for the agreement and plan of merger to be
13:26:42 entered into by Google and YouTube and certain
13:26:46 stockholders of YouTube.
13:26:48 MR. HOHENGARTEN: Q. And for an aggregate
13:26:49 consideration defined as a certain number of shares of
13:26:54 stock?
13:26:54 A That's correct, yeah. For the purposes of

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13:26:55 how we do that, derive that analysis, we come up with
13:26:58 a certain number of -- or sorry -- it's based upon a
13:27:02 certain number of shares that is derived from that
13:27:05 formula that we gave.
13:27:34 Q And if you look back at Exhibit 17 --
13:27:44 A Sure.
13:27:45 Q -- which is the board presentation, Bates
13:27:53 page 3563, page two also, it's labeled as --
13:28:01 A Okay.
13:28:01 Q -- it shows the -- as a summary of financial
13:28:06 analyses of Yellow, it shows the aggregate
13:28:09 consideration as 1 -- $1.65 billion; correct?
13:28:16 A Correct.
13:28:16 Q So I'm wondering if you -- that's the number
13:28:20 you used in performing your fairness evaluation?
13:28:23 A Yes. So it is, to answer your question
13:28:27 directly, and I think to clarify the distinction
13:28:29 between what you had been asking and what you're
13:28:31 getting at now, that is a proxy for what the
13:28:36 shareholders -- I shouldn't say a proxy -- that is the
13:28:40 value, if that transaction had closed right then, of
13:28:42 the consideration that they would receive in essence.
13:28:46 We can't predict what that will be in the
13:28:48 future, so we don't attempt to do that, and as it
13:28:51 correlates to the fairness opinion, our fairness

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13:28:54 opinion is as of the date we give it.

13:28:56 So -- so we use the value on that date even

13:28:58 though we know full well that in the future that value

13:29:01 could change. It's no different than any other

13:29:03 transaction, I guess, to be fair. If we -- you know,

13:29:05 if you know Viacom bought Time Warner and issued

13:29:09 stock, the day of the announcement of that

13:29:11 transaction, we would do the analysis and say it's

13:29:14 fair knowing fully well that as soon as the

13:29:18 transaction is announced the Viacom stock would change

13:29:22 in value substantially.

13:29:23 Q Okay.

13:29:23 A And therefore the consideration is received

13:29:25 by, you know, the target company.

13:29:27 Q Then you say as a proxy you use the -- the

13:29:30 value on the date of the opinion, and that value was

13:29:37 $1.65 billion?

13:29:39 A Yeah.

13:29:39 MR. VOLKMER: Object to the form of the

13:29:41 question.

13:29:41 THE WITNESS: Let me slow down.

13:29:42 I'd like to take back the word "proxy,"

13:29:44 because that's not a very good term here, because it's

13:29:47 not a proxy for what the value will be in the future.

13:29:49 The fairness opinion we're giving is opining

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13:29:52 to the value on that day, and we use the 1.65 billion
13:29:55 as the value on that day knowing fully well it will
13:29:59 fluctuate up or down, as the case may be.
13:30:02 MR. HOHENGARTEN: Okay.
13:30:10 Q And returning to Exhibit 18, which is the
13:30:19 fairness opinion.
13:30:19 A Okay.
13:30:20 Q On page -- at the bottom of page 2883, going
13:30:25 on to 2884, the last paragraph, the second sentence,
13:30:31 let me read, "With respect to the financial forecasts
13:30:35 for YouTube that we have reviewed (including potential
13:30:38 synergies and strategic benefits anticipated by the
13:30:42 management of Google to result from the merger), the
13:30:44 management of Google has advised us, and we have
13:30:47 assumed, that such forecasts have been reasonably
13:30:50 prepared on bases reflecting the best currently
13:30:51 available estimates and judgments of the management of
13:30:54 Google as to the future financial performance of
13:30:56 YouTube after giving effect to the merger and that the
13:31:02 financial forecast reflected in the forecasts utilized
13:31:05 in our analyses will be utilized in the amounts and at
13:31:05 the times indicated thereby."
13:31:10 Did I read that correctly?
13:31:11 A I thought you had transcribed a few words on
13:31:13 the second half of that where it says "after giving

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13:31:19 effect to the merger and that the financial results
13:31:21 reflect in the forecast utilized in our analyses will
13:31:25 be realized in the amounts and at the times indicated
13:31:27 thereby."
13:31:28 Q And that's correct.
13:31:29 Is that a correct statement?
13:31:42 A You might need to define that question. Is
13:31:44 it a correct statement that what you said is correct
13:31:47 or --
13:31:47 Q No.
13:31:48 A -- is it a correct statement that --
13:31:50 Q Is that sentence in that letter a correct
13:31:52 statement?
13:32:01 A Gosh, that's a very unusual question, because
13:32:04 the sentence says we're assuming that what you gave us
13:32:06 is accurate, and you're asking me if that's a correct
13:32:09 statement.
13:32:09 I think that's a question for Google, not for
13:32:13 us; right?
13:32:14 Q Well, let me focus on a couple of words in
13:32:17 this sentence where it says "The management of Google
13:32:21 has advised us, and we have assumed, that such
13:32:23 forecasts have been reasonably prepared," and it goes
13:32:26 on.
13:32:27 I want to know whether the management of

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13:32:30 Google actually advised you to that effect.

13:32:32 A Great. Thank you for clarifying that. That was the source of my confusion.

13:32:38 Yes, so they did advise us to use the set of projections that we've identified in a previous exhibit.

13:32:46 Q And they also advised you that those forecasts reflected the best current estimates and judgements of the management of Google as to the future financial performance of YouTube after giving effect to the merger?

13:33:05 MR. VOLKMER. Object to the form of the question.

13:33:08 THE WITNESS: Yes, at the time of this letter.

13:33:29 MR. HOHENGARTEN: Q. And you can set that aside.

13:33:31 A Okay. Thanks.

13:33:35 Q We'll mark Exhibit 19, which is CSSU 2065 through 2093.

13:33:57 (Document marked Duncan Exhibit 19 for identification.)

13:34:17 THE WITNESS: Can I ask my counsel a question or no off the record?

13:34:22 MR. TAFFET: Yeah.

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13:34:23 THE VIDEOGRAPHER: Off the record?

13:34:25 MR. HOHENGARTEN: We'll go off the record.

13:34:27 THE VIDEOGRAPHER: The time is 1:34 p.m.

13:34:34 We are off the record.

13:34:35 (Recess taken.)

13:35:34 THE VIDEOGRAPHER: The time is 1:35 p.m.

13:35:42 We are back on the record.

13:35:43 MR. HOHENGARTEN: Okay.

13:35:44 Q Mr. Duncan, just before we took a break for you to confer with your counsel, we handed you Exhibit 19 which had been identified.

13:35:51 A Yes.

13:35:51 Q Have you had an opportunity to look at it?

13:36:07 A Okay.

13:36:09 Q And Exhibit 19 is a cover e-mail from Amrit Rao attaching a number of materials; correct?

13:36:21 A Yes.

13:36:21 Q And the date of the e-mail is Sunday, October 8th, 2007; correct?

13:36:27 A Yeah, 2006.

13:36:29 Q Thank you.

13:36:29 The date of the e-mail is Sunday, October 8th, 2006; correct?

13:36:35 A Correct, yes.

13:36:35 Q Thank you.

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13:36:36 A Absolutely.

13:36:38 Q The cover e-mail, could you -- could you read the first three lines of the cover e-mail, the content of it?

13:36:50 A Sure. Down.

13:36:51 Q Yeah.

13:36:51 A "Dear IBC Members: Attached please find materials pertaining to project Snowmass in advance of the Monday 9:00 a.m. Eastern, 6:00 a.m. Pacific call October 9th."

13:37:07 Q Thank you.

And who are IBC members?

13:37:11 MR. TAFFET: You know, at this point, why don't we go off the record a moment and see if we can --

13:37:17 MR. HOHENGARTEN: We can go off the record.

13:37:18 THE VIDEOGRAPHER: Should we change tapes?

13:37:20 MR. HOHENGARTEN: Sure.

13:37:20 MR. TAFFET: Yeah.

13:37:22 THE VIDEOGRAPHER: Still have to get us off.

13:37:25 This is the end of videotape number two in the continuing deposition of Storm Duncan on July 16th, 2008. The time is 1:37 p.m.

13:37:35 We're off the record.

13:37:37 (Recess taken.)

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14:32:13 A Correct.

14:32:15 Q The definition of "premium content" in Exhibit 19 does not appear in the final version in Exhibit 17; correct?

14:32:24 A Correct.

14:32:24 Q Do you have any reason to believe that the definition changed between exhibit -- the draft in Exhibit 19 and the final version in Exhibit 17?

14:32:34 MR. VOLKMER: Object to the form of the question.

14:32:36 THE WITNESS: I guess a couple of things. One is I'm not sure why it wasn't carried over so that in and of itself might mean the definition changed. I don't know the answer to that, and the second supporting, I guess, statements or what I just said is that this as an example on -- on Exhibit 19 says "Copyrighted content such as movie/TV trailers, music videos, etc.," my recollection is that in the early document nonpremium content included trailers, if I remember right, although we might want to go back there and cross-reference, because I'm getting definitioned out a little bit or definition confused a little bit.

14:33:15 So that might be another reason it might have changed between the two. I think, you know, it's --

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14:33:20 on Exhibit 17, the premium video was stuff that
14:33:27 required providers to allow Yellow to monetize their
14:33:34 content. So I think that's how I would view the
14:33:36 definition on page nine in the absence of having
14:33:40 something specifically defining.
14:33:50 MR. HOHENGARTEN: Q. And now still sticking
14:33:51 with Exhibit 17, the final board model, you can set
14:33:54 Exhibit 19 aside.
14:33:56 A Okay.
14:33:57 Q Sticking with Exhibit 17, the final board
14:34:00 model on page 3570, just to confirm, the assumption of
14:34:08 the projection model there is that in 2007, 10 percent
14:34:12 of the premium content providers have given that
14:34:15 permission that's required for Yellow to monetize the
14:34:19 content; correct?
14:34:21 MR. VOLKMER: Object to the form.
14:34:41 (Whereupon, record read by the Reporter as
14:34:41 follows:
14:33:57 "Question: Sticking with Exhibit 17, the
14:33:59 final board model on page 3570, just to
14:34:07 confirm, the assumption of the projection
14:34:09 model there is that in 2007, 10 percent of
14:34:12 the premium content providers have given
14:34:15 that permission that's required for Yellow
14:34:17 to monetize the content; correct?")

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15:43:55 my memory.

15:43:57 Q Let's turn to Exhibit 21.

15:43:59 A Okay.

15:44:05 Q Exhibit 21 consists of handwritten notes also interspersed with some other pages. Just focusing on that handwritten notes at the moment, are those your notes?

15:44:17 A Looks like my handwriting, for lack of a better way of putting it.

15:44:25 Q And this set of documents that we've labeled Exhibit 21 was produced to us all as one set, I believe. Would this be maintained as a single file by you? Do you recall?

15:44:52 A No, I don't recall. My guess is it was probably just a stack of stuff and somehow I think you guys interpret it as one document. I think it's a lot --

15:45:00 Q Okay.

15:45:00 A -- of documents that were probably sitting together.

15:45:10 Q Looking at the first page of Exhibit 21 --

15:45:16 A Okay.

15:45:17 Q -- actually, do you know what these are notes of on the first page -- notes from?

15:45:38 A It looks like notes on diligence, like asking

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15:45:42 questions of them of what they're doing and how it's
15:45:44 going.
15:45:45 Q Would they be notes of the due diligence
15:45:49 meetings with YouTube personnel at Wilson Sonsini's
15:45:52 offices?
15:45:52 A That's highly possible, yeah. I don't know
15:45:54 the answer, but it seems like that's definitely a
15:45:57 possibility here.
15:45:58 Q When you take notes in a due diligence
15:46:01 setting, do you make every effort to accurately record
15:46:06 what's going on?
15:46:08 MR. VOLKMER: Objection to the form.
15:46:10 THE WITNESS: If this was done in the
15:46:13 context -- context of me doing due diligence, I try to
15:46:17 write as much as I can down.
15:46:20 MR. HOHENGARTEN: Q. And as accurately as
15:46:22 possible?
15:46:22 A Yeah. I wouldn't make up stuff. Yeah,
15:46:26 absolutely. Some of it might not be what I heard. It
15:46:29 might be my interpretation or might be other people's
15:46:32 interpretation that I don't agree with. So that
15:46:32 doesn't mean there's not much truth in here either
15:46:39 communicated to me or --
15:46:39 Q Okay.
15:46:39 A -- that's how it was, but....

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15:46:42 Q Several lines -- just a few lines down from
15:46:44 the top there's a -- reads "Brent/Gideon"; correct?
15:46:49 A Uh-huh.
15:46:50 Q Does that indicate that you met with Brent
15:46:53 Hurley and Gideon Yu during due diligence?
15:46:57 A It could. Typically that's not what I would
15:47:00 put in my notes, but maybe because this was a while
15:47:03 ago, I had a different style back then. So it could
15:47:06 either mean that those were the two folks that were
15:47:08 giving me the information or could mean follow-up with
15:47:13 Brad and Gideon or something.
15:47:13 So I don't want to give you 100 percent
15:47:15 comfort on that, but it seems logical that it could
15:47:18 have been the two folks that were there.
15:47:20 Q And you say it's not what -- that's not what
15:47:21 you would normally write who you met with in your
15:47:25 notes. Where would you normally write?
15:47:26 A I probably normally have like -- you know,
15:47:27 although this is up at the top, but I probably have
15:47:30 like a category of like Credit Suisse people, you
15:47:32 know, lawyers, client people, et cetera, in different
15:47:35 columns, and I don't have it, but this was a while
15:47:38 ago. Maybe my style has changed since then. Maybe I
15:47:44 should go back to my old style.
15:47:52 Q If you could flip back a couple of pages --

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15:47:55 A Okay.

15:47:56 Q -- to page 1865 --

15:47:59 A All righty.

15:48:01 Q -- in Exhibit 21. At the top of that page, could you read the first two lines at the top of that page, since it's your handwriting.

15:48:14 A Sure.

15:48:15 That doesn't mean it will be correct when I read it either. "No copyright issues; DMCA (no issues). Don't target because we can't profit from these pages."

15:48:35 Q And do you know what "DMCA" is referring to there?

15:48:40 MR. TAFFET: Just for point of clarity, if it's -- there seems to be a 1, 2, and 3, if you go to the prior page. This is a continuation of number two. I don't know if that --

15:48:51 MR. HOHENGARTEN: Okay.

15:48:51 MR. TAFFET: -- changes the witness's answer, but it's....

15:48:54 MR. HOHENGARTEN: Thank you, Mr. Taffet.

15:48:55 Q Why don't we, so we have the full context, that's helpful, have you look at page 1864. The last two lines have a number two circled.

15:49:09 Could you read those two lines?

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15:49:12 A You mean the "Search Deal" and the
15:49:15 "Partnerships"?
15:49:16 Q I believe --
15:49:17 A The first two lines of two you're saying?
15:49:19 Yeah.
15:49:19 Q Look at the bottom two lines of the page.
15:49:21 A Okay. Yeah. Got it. My bad. I
15:49:23 misunderstood you.
15:49:23 So it says "Partnerships (Studio\Labels) most
15:49:31 aggressively monetized."
15:49:33 Q Is it your understanding that the next two
15:49:36 lines on that page are a part of the same set of notes
15:49:40 about point two?
15:49:40 A Yeah, it looks to be a carryover. That's
15:49:42 right. I think that's fair.
15:49:47 Q And in that context, what does "No copyright
15:49:54 issues DMCA refer to"?
15:49:56 MR. VOLKMER: Objection to the form of the
15:49:57 question.
15:49:58 THE WITNESS: I would assume it's under the
15:50:04 subcategory of "Partnerships (Studio/Labels)."
15:50:18 MR. HOHENGARTEN: Q. Do you recall whether
15:50:19 this was something that is notes of something you were
15:50:21 told?
15:50:23 A Yeah, I think that's what all of this is, is

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15:50:25 the note. Oh, you're referring specifically to my
15:50:28 comment where I might put down my own opinion?
15:50:30 Q Yes. You asked -- exactly --
15:50:31 A Oh, sorry.
15:50:32 Q -- where you said a number, so....
15:50:34 A I would not have expressed my own opinion on
15:50:37 that statement, so it was definitely told to me by
15:50:39 someone else.
15:50:40 Q And do you recall who that person was?
15:50:45 A I don't.
15:50:45 Q And --
15:50:50 A Someone from YouTube.
15:50:51 Q And do you recall the significance of the
15:50:55 last line that we've been discussing, don't -- which
15:50:58 is on page 1865 -- that says "Don't target because we
15:51:03 can't profit from these pages"?
15:51:04 MR. VOLKMER: Object to the form of the
15:51:06 question.
15:51:15 (Whereupon, record read by the Reporter as
15:51:15 follows:
15:50:52 "Question: And do you recall the
15:50:54 significance of the last line that we've
15:50:56 been discussing, don't -- which is on page
15:51:00 1865 -- that says 'Don't target because we
15:51:03 can't profit from these pages'?")

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15:51:16 THE WITNESS: You good with that question?

15:51:20 MR. HOHENGARTEN: Q. If you understood it. I'll rephrase it if you didn't.

15:51:24 A Yeah, if you could rephrase it. I think --

15:51:25 Q Okay. Looking at page 1865 --

15:51:27 A Yeah.

15:51:27 Q -- we've been discussing a number of lines. The last one reads "Don't target because we can't profit from these pages"; correct?

15:51:35 A Uh-huh.

15:51:35 Q Do you recall the significance of that statement?

15:51:39 A I think by "significance" you mean the importance of it?

15:51:42 Q What does it mean?

15:51:43 A Okay. The meaning of it. Sorry. Got it. Thank you.

15:51:45 It -- my gut tells me that there's something that I missed between the "No copyright issues DMCA line," and "Don't target because we can't profit from these messages --" I'm sorry "-- from these pages," because it seems as though what they're saying here is that some of this stuff was monetized or there weren't copyright issues, and then other stuff wasn't targeted for revenue monetization, because they can't profit

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15:52:25 from those pages.

15:52:27 Q And to the best of your recollection,

15:52:30 somebody from YouTube would have explained that to

15:52:32 you?

15:52:32 A Yes.

15:52:32 Q But you don't recall who specifically?

15:52:34 A No.

15:52:37 MR. HOHENGARTEN: I think we need to change

15:52:38 video tapes.

15:52:42 THE VIDEOGRAPHER: This is the end of video

15:52:44 tape number three in the continuing deposition of

15:52:47 Storm Duncan on July 16th, 2008. The time is

15:52:55 3:52 p.m.

15:52:56 We are off the record.

15:52:57 (Recess taken.)

16:04:54 THE VIDEOGRAPHER: This is the beginning of

16:04:57 video tape number four in the continuing deposition of

16:05:01 Storm Duncan on July 16th, 2008. The time is

16:05:06 4:05 p.m. We're off the record -- we're back on the

16:05:10 record.

16:05:11 MR. HOHENGARTEN: Okay.

16:05:12 Q Continuing with Exhibit 21, if you would turn

16:05:18 to Bates page 1957, and do you see roughly in the

16:05:32 middle of the page there's a line that begins with

16:05:35 "60 percent"?

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16:05:35 A Uh-huh.

16:05:35 Q Can you read that line and the next line

16:05:38 please?

16:05:38 A Sure. "60 percent is 'Premium.'

16:05:42 Professionally produced. Legitimate and

16:05:49 illegitimate."

16:05:50 Q And do you recall what the significance or

16:05:52 meaning of those notes are?

16:05:57 MR. VOLKMER: Object to the form of the

16:05:58 question.

16:06:01 MR. HOHENGARTEN: Q. Did you understand my

16:06:02 question?

16:06:02 A The meaning of those notes are? So are you

16:06:05 asking what do I mean by "legitimate and

16:06:09 illegitimate," or --

16:06:09 Q That would be part of my question certainly.

16:06:11 A You want to break it down into parts then?

16:06:14 Q What do you mean by "legitimate,

16:06:17 illegitimate"?

16:06:18 A Okay. I think.

16:06:19 MR. VOLKMER: I'm going to object to the form

16:06:20 of that question.

16:06:22 You can proceed.

16:06:23 THE WITNESS: Can you read it back?

16:06:24 MR. HOHENGARTEN: Q. Actually. I'll just --

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16:06:26 A Okay.

16:06:28 Q What is meant in these notes by "legitimate" and "illegitimate"?

16:06:34 A Okay. Okay. My recollection is that there's professionally produced content which is by, you know, a studio or someone professional that would own that content, and legitimate and illegitimate is whether it was put up in agreement with YouTube and that producer or put up by someone else without the agreement of that producer.

16:06:58 Q Okay. And does -- does -- do those notes reflect something that somebody told you as opposed to your own thoughts?

16:07:09 A Definitely something that someone told me as opposed to my own thoughts to your question.

16:07:16 Q And do you recall who?

16:07:32 A I don't.

16:07:34 Q Do you recall whether it was somebody from YouTube?

16:08:07 A I don't.

16:08:07 Q Do you recall whether it was somebody from Google?

16:08:10 A I don't.

16:08:10 Q And do you recall roughly when this information was imparted to you?

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16:08:20 MR. VOLKMER: Object to the form of the question.

16:08:22 THE WITNESS: Somewhere between Thursday and Monday of that weekend.

16:08:26 MR. HOHENGARTEN: Q. Some time during the -- during the due diligence process for your fairness evaluation?

16:08:31 A That's correct.

16:08:31 Q Mr. Browne is now going to ask a few questions.

16:08:38 A Okay.

16:08:38 Q He represents the class.

16:08:40 MR. BROWNE: Okay. Can we go off the record for a few minutes? Thanks.

16:08:45 THE VIDEOGRAPHER: The time is 4:08 p.m. We are off the record.

16:08:48 (Recess taken.)

16:10:41 (Document marked Duncan Exhibit 22 for identification.)

16:11:01 THE VIDEOGRAPHER: The time is 4:11 p.m. We're back on the record.

16:11:06 EXAMINATION BY MR. BROWNE

16:11:06 MR. BROWNE: Q. Good afternoon, Mr. Duncan. My name is John Browne. I represent the English Premier League and the Class in this case, and I just

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16:16:24 MR. BROWNE: Q. And then earlier when we
16:16:25 were talking about the meaning of IP issues in that
16:16:27 sentence, you -- you sort of had a definition in your
16:16:31 mind as what you thought of as IP issues, stealing
16:16:34 source code, something else you may have said.
16:16:36 Were you -- do you exclude from that phrase
16:16:38 IP issues, copyright issues?
16:16:41 MR. VOLKMER: Object to the form of the
16:16:42 question.
16:16:44 THE WITNESS: Yeah, when I -- when I think of
16:16:48 IP issues just, you know, when this e-mail crossed me
16:16:52 in a technology deal, my immediate reaction is
16:16:55 intellectual property issues, not copyright issues.
16:16:58 MR. BROWNE: Okay.
16:16:59 Q Do you know whether -- whether, in fact, you
16:17:02 guys decided to dive deeper into the IP issues in
16:17:09 connection with your due diligence?
16:17:12 MR. VOLKMER: Object to the form of the
16:17:13 question.
16:17:14 THE WITNESS: Zach attended the diligence
16:17:21 with me, so I would assume that if he had an issue
16:17:25 with it, and we had a chance to deal with it, which we
16:17:28 did that day but, you know, we would have vetted all
16:17:31 of our questions.
16:17:32 MR. BROWNE: Q. Other than the types of IP

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16:17:36 issues that you -- that you described to me, were
16:17:39 aware in the time frame that you received this e-mail
16:17:41 of -- of copyright issues that were facing YouTube?
16:17:44 A Yeah, yes.
16:17:45 Q And what were those?
16:17:47 MR. VOLKMER: Object.
16:17:48 THE WITNESS: Sorry.
16:17:48 MR. VOLKMER: Object to the form of the
16:17:49 question.
16:17:50 THE WITNESS: I think we had just talked
16:17:52 about the primary copyright issue which is whether
16:17:56 something is put up on the site by a publisher. We
16:17:59 have an agreement with that publisher or that it was
16:18:02 put up by someone else that didn't have the permission
16:18:04 from that publisher to put it up.
16:18:07 MR. BROWNE: Q. Is that something that you
16:18:09 guys looked into, that Credit Suisse looked into in
16:18:12 connection with due diligence?
16:18:13 A I think -- I think that's what we spent a lot
16:18:16 of time earlier today on when we were going through
16:18:19 the model which is the percentage. You know, Google's
16:18:23 goal was to -- to -- you know, let's go back to
16:18:28 Exhibit 16 if that's -- that's what I remember.
16:18:32 You know, Google's goal on this premium video
16:18:35 content was to have the permission content which was

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that 10 percent, 50 percent we spent so much time on earlier to get the permission to have that content on that legitimate side, the permission side, and that's what I think the whole purpose of that entire conversation was earlier today was how do you -- how do they anticipate monetizing that.

MR. BROWNE: Right.

Q Other than that -- correct me if I'm wrong -- other than YouTube or, I'm sorry, Google giving you some information about what was premium content and how much was not premium content on the site, and then Credit Suisse using that information to create the model, what, if anything else, did Credit Suisse do to diligence copyright issues?

MR. VOLKMER: Object to the form of the question.

THE WITNESS: So we had a lot of conversations. You know, we -- we aren't copyright attorneys, so we didn't do copyright diligence, if that's the specific answer to your question.

You know, we obviously spent a lot of time that day with YouTube and with Google talking about the monetization plan which is, I think, the source of how this model came about.

MR. BROWNE: Okay.

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16:19:40 Q Did you spend a lot of time that day or any other day talking with anyone at Google or YouTube about specific copyright issues aside from the monetization point?

16:19:56 A So is there a copyright issue where they're not monetizing it you're saying?

16:20:02 Q Let me -- let me just start asking a different way.

16:20:04 A Okay.

16:20:05 Q You -- you dealt with the monetization of the copyright -- copyrighted material, is that correct, in your valuation model?

16:20:13 MR. VOLKMER: Object to the --

16:20:14 MR. TAFFET: Objection to the form.

16:20:15 MR. VOLKMER: Object to the form of the question.

16:20:18 MR. BROWNE: Q. Did you?

16:20:20 A No.

16:20:21 Q Okay. When you guys -- when -- when Credit Suisse was conducting its due diligence, I'm just going to try it in a very broad way --

16:20:34 A Sure.

16:20:35 Q -- what did you do? Tell me everything you did with respect to copyright issues that were facing YouTube.

16:20:40

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